

Date of Meeting: July 15, 2008

BOARD OF SUPERVISORS

ACTION ITEM

#9

SUBJECT: **SBEX-2008-0001**
ESTATES AT CREIGHTON FARMS-SECTION IV-B

ELECTION DISTRICT: Dulles

CRITICAL ACTION DATE: July 29, 2008

RECOMMENDATIONS:

Staff: Staff recommends approval of the application subject to the Findings and Conditions of Approval (Attachments 2 & 3)

BACKGROUND:

Juno-Loudoun, LLC (the "Applicant") of North Palm Beach, FL has submitted an application for a Subdivision Exception under the provisions of section 1243.13 Exception Procedures of the Loudoun County Land Subdivision and Development Ordinance (LSDO). Under this provision, the application is reviewed by Staff and sent directly to the Board of Supervisors for a public hearing without being reviewed by the Planning Commission. An exception is requested to LSDO Section 1245.01(2), which requires all lots to front on an existing or recorded public street. The exception would permit thirteen (13) residential lots and one (1) open space parcel to be served by private access easements in lieu of public streets. It is anticipated that the open space parcel to be maintained by the Homeowners Association (HOA) will include a community center and private recreational facilities.

The property is partially zoned AR-1 (Agricultural Rural) and partially TR-3UBF (Transitional Residential Upper Broad Foley), and is also located within the FOD (Floodplain Overlay District) under the Revised 1993 Loudoun County Zoning Ordinance. The subject Property is located east of Watson Road (Route 860), south of Red Hill Road (Route 617) and approximately 1.5 miles north of John Mosby Highway (Route 50) in the Dulles Election District.

The property consists of approximately two hundred and forty-one (241) acres of which forty (40) acres are located within the TR-3UBF (Transitional Residential Upper Broad Foley) zoning district. As part of the Estates at Creighton Farms, the subject Property is part of the existing gated private residential golf course community. The Property is more particularly described as Tax Map 90, Parcel 37 (PIN #283-36-3815).

This request applies solely to the forty (40) acres situated within the TR-3UBF zoning district. A Record Plat application, SBRD-2007-0001, for the two hundred and forty-one (241) acres is currently under review for the creation of forty-four (44) residential lots and a residual forty (40) acre parcel. The residual parcel is the remaining portion of the Estates at Creighton Farms community to be developed.

On July 7, 2008 the Board of Supervisors held a public hearing, and no members of the public spoke regarding this application. The Board questioned whether the proposed Homeowners Association Community Recreation Facility is a permitted use within the open space. The Applicant noted that the Homeowners Association Community Recreation Facility and recreational uses are permitted within the open space in the TR-3 Zoning District. The Board also questioned the size of the proposed Homeowners Association Community Recreation Facility. The Applicant responded that they would look into the potential structure size of the Homeowners Association Community Recreation Facility. A written response has been provided by the Applicant in regards to the uses permitted in the TR-3 Zoning District as well as the potential size of the structure. Staff has reviewed the Applicant's response letter, and concurs with the accuracy of its content. The Applicant's responses to the Boards' questions are found in Attachment #4.

The Board voted 8-0-1 (Burk absent) to forward the application, with Conditions of Approval, to the July 15, 2008 Business Meeting for action.

ISSUES:

No outstanding issues.

FISCAL IMPACT:

Since the construction, maintenance, and repair of the private streets would be the responsibility of the property owner and/or homeowners' association, there would appear to be no fiscal impact to Loudoun County other than the normal capital cost impacts associated with adding thirteen (13) new homes in accordance with by-right densities.

ALTERNATIVES:

The Board of Supervisors may continue discussion or recommend approval or denial of the subdivision exception.

DRAFT MOTIONS:

1. I move that the Board of Supervisors approve SBEX-2008-0001, Estates at Creighton Farms-Section IV-B, subject to the Conditions of Approval shown as Attachment 3 and based upon the attached Findings.

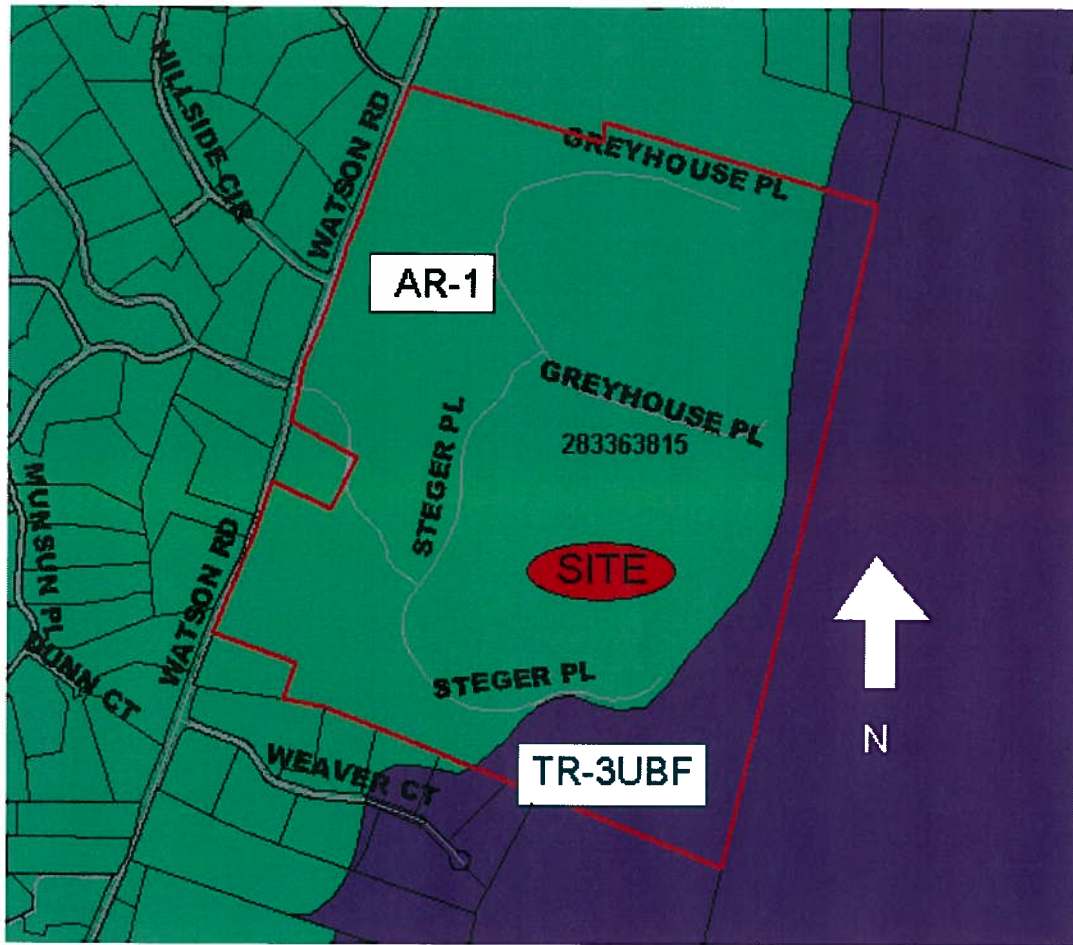
Or

2. I move alternate motion.

ATTACHMENTS:

1. Vicinity Map
2. Findings of Approval
3. Conditions of Approval
4. Applicant's Response

STAFF CONTACT: Evan Harlow, Department of Building and Development



VICINITY MAP

Directions: The property is located east of Watson Road (Route 860), south of Red Hill Road (Route 617) and approximately 1.5 miles north of John Mosby Highway (Route 50).

ATTACHMENT 1

FINDINGS OF APPROVAL

1. The proposal conforms to the policy guidance of the Revised General Plan.
2. Upon approval of the subdivision exception to permit lots to be served by private access easements, the application will conform to the applicable requirements of the Revised 1993 Loudoun County Zoning Ordinance.
3. The applicant has demonstrated that the circumstances surrounding this application are unusual and that strict adherence to the general requirements would result in an unusual situation. The proposed private streets are justified according to the criteria set forth in the LSDO for Subdivision Exception applications since the remaining TR-3UBF portion for thirteen (13) residential lots and one (1) open space parcel can only be served by the extension of a private access easement within Section IV of the Estates at Creighton Farms, previously approved with SBEX-2005-0005.

ATTACHMENT 2

**CONDITIONS OF APPROVAL
ESTATES AT CREIGHTON FARMS-SECTION IV-B
SBEX-2008-0001**

1. Road maintenance of the private streets shall comply with the private street standards of the Facilities Standards Manual and the following conditions, (which conditions are set forth in Section 4-110(B) of the Revised 1993 Loudoun County Zoning Ordinance which specifies the following conditions concerning the use of private streets in the PD-H zoning district):
 - All residences served by a private road shall be subject to a recorded covenant expressly requiring private maintenance of such road in perpetuity and the establishment, commencing with the initial record plat, of a reserve fund for repairs to such road.
 - The record plat and protective covenants for such development shall expressly state that the County and VDOT have no, and will have no, responsibility for the maintenance, repair, or replacement of the private roads.
 - Sales brochures or other literature and documents provided by the seller of lots served by such private roads shall include information pertaining to responsibility for maintenance, repair, replacement, and covenants pertaining to such lots including a statement that the County has no, and will have no, responsibility for the maintenance, repair, or replacement of private roads.
2. The Applicant shall provide water supply for fire protection to the 40-acre property known as future Section IV-B, Estates at Creighton Farms, in accordance with the design requirements outlined in FSM Section 2.340.
3. The Applicant shall install a total of two dry hydrants within the Estates at Creighton Farms planned community. These two dry hydrants will be installed in Section III of the Estates at Creighton Farms, each taking water from one of the two ponds located in Section III. An unpaved, ungraveled access easement will be created by the Applicant to provide access to each dry hydrant.

ATTACHMENT 3

**CONDITIONS OF APPROVAL
ESTATES AT CREIGHTON FARMS-SECTION IV-B
SBEX-2008-0001**

4. The Applicant shall gravel any unpaved portion of the existing emergency access easement located within Section II of the Estates at Creighton Farms, between the terminus of Batey Court and the Barclay Ridge Section 1 property line. The Applicant has the right to erect a barrier chain within this emergency access easement. Prior to erecting a barrier chain, the Applicant will offer to meet with a representative of Loudoun County Fire and Rescue to determine whether another type of barrier would be agreeable to both parties, and to determine the necessary width of the barrier, so as to allow for fire truck access. The Applicant retains the right to pave any portion of the emergency access easement, at its discretion.
5. As part of the record plat for future Section IV-B of the Estates at Creighton Farms, the Applicant will create an access easement over all streets to allow access for school transportation personnel in the proper performance of their duties.
6. The private streets shall be constructed in accordance with Section 4.330.A and B and Section 4.340 of the Facilities Standards Manual (FSM).
7. The private streets will substantially conform to the SBEX-2008-0001 plat, but allow for reasonable flexibility for engineering purposes.

ATTACHMENT 3

From: Sally Hankins *SH*
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To: Evan Harlow, Project Manager

Copy: Supervisor Stevens Miller, Loudoun County Board of Supervisors

Date: July 9, 2008

Subject: **SBEX 2008-0001**
Additional Information Regarding the HOA Facility / Community Center in the TR-3UBF Zone

This memo is intended to provide a response to Supervisor Miller's inquiry at the July 7, 2008 Board Public Hearing, regarding land uses located within the open space of the above-referenced application.

Juno-Loudoun's Subdivision Exception application (SBEX 2008-0001) included a plat that shows within the TR-3 open space the approximate location of a future HOA Community Center and associated recreational facilities, and shows the extension of a private roadway to serve those facilities.

The private roadway that will serve the Community Center was approved in 2005, as part of Subdivision Exception application 2005-0005, and so is not part of the pending Subdivision Exception application¹. In addition, the future HOA Community Center and associated recreational facilities are uses permitted as a matter of right in the TR-3UBF zoning district open space, and are not part of the pending Subdivision Exception application. These features were nonetheless shown on the plat for SBEX 2008-0001 so that the complete project would receive staff review.

The future HOA Community Center is identified in the use list set forth in Section 2-1502 of the Zoning Ordinance as "Community Center, HOA facilities only," and is identified as a permitted use in the TR-3UBF zoning district. A "Community Center" is defined in Article VIII of the Zoning Ordinance as follows:

a place, structure, area or other facility used for and providing fraternal, cultural, social, educational or *recreational programs or activities, or swimming pools, tennis courts and similar facilities of a homeowners*

¹ This has been confirmed by a written determination issued by Building and Development dated January 7, 2008, which was included in the Staff Report for SBEX at Attachment 13 (pages A-27, 28).

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association, open to the public or a designated part of the public, and which may be publicly or privately owned. (Emph. added)

The TR-3UBF zoning district is required to consist of at least 50% open space. And, pursuant to Zoning Ordinance Section 2-1503, all development in the TR-3 zoning district is subject to the additional regulations set forth in Section 5-701 -- which governs, among other things, the uses permitted in the TR-3 open space.

The uses permitted in the TR-3 open space are set forth in Section 5-701(C)(3)(b). This section states that any use included in the definition of "open space," as that term is defined in Article VIII, may also be established in the TR-3 open space.

In turn, Article VIII defines "open space" to allow for HOA buildings and recreational facilities, so long as they are in either the TR or JLMA zoning district. The definition of "open space" limits the area that may be covered by buildings or structures in the open space to 1% of the open space land area. In this case, because the TR-3 property consists of just over 40 acres, the required minimum open space is approximately 20 acres. The maximum lot coverage within the subject property's open space is 1% of 20 acres, or, if more than 20 acres of open space is provided, then 1% of that larger number.

Although the applicant's Community Center and recreational facilities have not yet been designed, the applicant's vision at this time is to provide a 6,000 to 8,000 square foot Community Center building, a Junior Olympic sized swimming pool, four tennis courts, two paddle tennis courts, a basketball court, and associated parking. There have been discussions in the past of adding ball fields as an additional feature. The future HOA Community Center and associated recreational facilities will be subject to the 1% lot coverage limit, and will be subject to a review by zoning staff as part of site plan approval.

I hope this helps to answer the questions raised at the Board public hearing. Please do not hesitate to contact me with any additional questions at 703.729.8549, or shankins@reedsmith.com.

ATTACHMENT 4